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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE THIRD INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES UP TO US$ 100,000 (CATEGORY "C" CLAIMS)

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INTRODUCTION

1. This report contains the recommendations to the Governing Council of the United Nations Compensation Commission (the "Commission") by the panel of Commissioners (the "Panel") appointed to review individual claims for damages up to US$ 100,000 ("category 'C' claims"), pursuant to article 37(e) of the Provisional Rules for Claims Procedure[1] (the "Rules"). These recommendations concern the third instalment comprising 64,067 category "C" claims submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules.

2. The Panel has reviewed the third instalment of category "C" claims in a continuum with its processing of the first and second instalments of category "C" claims. This report should therefore be considered in conjunction with the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$ 100,000 (Category 'C' Claims)" and its annexes[2] (the "First Report"), and the "Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of Individual Claims for Damages up to US$ 100,000 (Category "C" Claims)" and its addendum[3] (the "Second Report"), which have been approved by the Governing Council.[4] The third instalment, composed of category "C" claims submitted by the Governments of Kuwait and Egypt, has been processed on the basis of the considerations, precedents and determinations expressed in the First and Second Reports, which the present report incorporates by reference.[5]

3. This report reflects the work performed by the Panel since it issued its recommendations on the second instalment of category "C" claims. The Panel met with the Commission's secretariat at the secretariat's headquarters in Geneva on 14 June 1996. The Panel acknowledges the efficient work performed by the secretariat in connection with the Panel's review of the third instalment.

I. CLAIMS PROCESSING APPROACH

4. In its review of claims and in making its recommendations, the Panel has applied relevant Security Council resolutions, Governing Council Decisions, the Rules, and other relevant principles and practices of international law. In addition to the information presented in the claims, the Panel has also taken into account the following: information accompanying the submission of the third instalment of claims provided by the Executive Secretary pursuant to article 32 of the Rules; additional information and views presented by Governments and international organizations, and by the Government of Iraq, in response to the reports presented to the Governing Council by the Executive Secretary in accordance

with article 16 of the Rules; and relevant United Nations and other reports.

5. In terms of defining the Panel's mandate, the Governing Council's Decision 1 has particular relevance.6/ In this Decision the Governing Council determined that category "C" claims, together with claims in categories "A" and "B", were considered to be "urgent" claims. Accordingly, Decision 1 provides for the processing of these categories of claims "on an expedited basis" using procedures "such as checking individual claims on a sample basis, with further verification only if circumstances warranted."7/ Consistent with this Decision, article 35 of the Rules states that documents and other evidence will be the reasonable minimum appropriate under the circumstances, with a more flexible evidentiary standard applying to claims for smaller amounts.

6. The First and Second Reports provide an extensive discussion of the considerations and preparations underlying the processing methodologies applied to the category "C" claims.8/ In view of the Panel's mandate, and in keeping with the "fast-track" processing approach applied to the second instalment of claims, the application of statistical sampling and modelling techniques continues to form the basis for the third instalment of category "C" claims.9/ The Panel notes that, as explained in the Second Report, claims not meeting the fast-track processing criteria also require expedited processing and will be included in future instalments. However, given the large number of claims received in category "C", the Panel has determined that those claims that can be processed efficiently through database-assisted techniques will be addressed first.

II. CLAIMS INCLUDED IN THE THIRD INSTALMENT

7. The Panel is aware that the Governments of Kuwait and Egypt have submitted the largest number of category "C" claims to the Commission.10/ Moreover, as noted in the Second Report, Kuwait and Egypt were the only Governments to submit claims in both computer and paper format.11/ The submission of claims in computer format has made claims information readily available for thousands of claimants on the Commission's database, providing access to data that can be processed efficiently through the Panel's fast-track method. The Panel is also aware that the data entry12/ of claims information for other submitting Governments and international organizations is progressing and that, once the data entry of these claims is complete, additional claims will become available for processing by means of the fast-track method. In view of the above, the third instalment of category "C" claims is composed of claims submitted by the Governments of Kuwait and Egypt. The processing of these claims at this stage will result in time-savings and will facilitate the processing of further claims submitted by other Governments and international organizations, which will be included in future instalments.

8. The Kuwaiti claims included in the third instalment involve only those losses claimed on the "C1" page of the claim form for mental pain and anguish related to forced hiding ("C1-MPA" claims).13/ The Egyptian claims in this instalment include losses claimed on the "C1" page for transportation, food, lodging, relocation and other related losses ("C1-Money" claims); losses claimed on the "C4" page for clothing, personal effects, household furnishings and other personal property-related losses ("C4-CPHO" claims); losses claimed on the "C5" page related to bank accounts located in Kuwait ("C5-Kuwait bank" claims); and wages and salary losses claimed on the "C6" page ("C6-Salary" claims). In addition to C6-Salary losses, claims submitted by the Government of Egypt on the "C6" page for mental pain and anguish related to the deprivation of all economic resources ("C6-MPA" claims) have also been included as a fast-track loss in the third instalment.14/

III. RECOMMENDATIONS

9. The Panel hereby presents the amounts recommended as compensation for 64,065 claims in the third instalment of category "C" claims. Totalling US$ 323,776,505.21, the recommended compensation amounts are listed in the summary table below for the two submitting Governments. The Governments of Kuwait and Egypt will each be provided with a confidential listing containing the individual recommendations made in respect of their claimants. The amounts recommended for compensation in the third instalment resolve these claims in their entirety. Two claims in the third instalment of category "C" claims are not recommended for payment. The claims not recommended for payment relate exclusively to C5-Kuwait bank and C6-MPA losses for Egypt.15/

Summary of Recommendations

Country	Number of Claims Recommended for Payment	Number of Claims Not Recommended for Payment	Amount of Compensation Recommended (US$)
EGYPT	16,065	2	115,378,505.21
KUWAIT	48,000		208,398,000.00
Total	64,065	2	323,776,505.21

10. Using a special program similar to that used for the processing of category "A" claims, the secretariat has performed a cross-check on a number of available identifiers in order to exclude as much as possible intra- and cross-category multiple recovery.16/ The Panel is satisfied that the secretariat has used reasonable and practical means to detect the

existence of duplicate claims. However, given the difficulty for the secretariat to identify each potential case of multiple recovery, the Panel recommends that similar checking procedures be implemented by the Governments of Kuwait and Egypt to prevent instances of overpayment to their claimants.

11. With reference to the considerations on the subject of interest expressed in the First Report,17/ the Panel recommends that interest be awarded on the claims included in this third instalment of category "C" claims as of 2 August 1990.18/

12. These findings are without prejudice to the conclusions and findings of panels for other categories of claims. The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

Geneva, 14 June 1996

Mr. L. Yves Fortier, Q.C.
Chairman

Mr. Sergei N. Lebedev
Commissioner

Mr. Philip K. A. Amoah
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ S/AC.26/1994/3.

3/ S/AC.26/1996/1 and S/AC.26/1996/1/Add.1/Rev.1.

4/ S/AC.26/Dec.25 (1994) and S/AC.26/Dec.36 (1996).

5/ The comprehensive First Report noted that future reports covering further instalments were expected to be more concise. First Report, p. 2.

6/ S/AC.26/1991/1.

7/ Idem.

8/ See First Report, pp. 49-208 and Second Report, paras. 24-51.

9/ The "fast-track" processing approach is described in greater detail in the Second Report. See, in particular, paragraphs 8 through 14.

10/ Approximately 166,000 and 92,500 category "C" claims have been filed by the Governments of Kuwait and Egypt respectively.

11/ Pursuant to article 7(2) of the Rules.

12/ See Second Report, para. 18.

13/ See the discussion in the Second Report on the methodology used in resolving claims for forced hiding. Second Report, paras. 25-32.

14/ See Second Report, note 48.

15/ In connection with the rejection of these claims, the Panel notes in particular that the claimants' asserted deprivation of all economic resources should be clearly observable from the claim form and the attached documents. See First Report, p.194 and Second Report, note 48.

16/ See S/AC.26/Dec.22 (1994) and S/AC.26/Dec.24 (1994).

17/ First Report, pp. 32-33.

18/ See also S/AC.26/1992/16.

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